

**STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**IN THE MATTER OF HEARING DETERMINATION  
REQUEST FOR THE WASTE ISOLATION PILOT  
PLANT (WIPP) DISCHARGE PERMIT RENEWAL  
AND MODIFICATION APPLICATION FOR DP-831**

**GROUND WATER QUALITY BUREAU,  
PETITIONERS.**

**Docket No. GWQB 21-19**

**COMMENTS ON THE HEARING OFFICER REPORT  
ON BEHALF OF  
SOUTHWEST RESEARCH AND INFORMATION CENTER**

Pursuant to 20.1.4.500(C)(2) NMAC, Southwest Research and Information Center (“SRIC”) hereby submits the following Comments on the Hearing Officer’s Report and Recommended Decision issued on November 19, 2021.

**COMMENTS**

1. SRIC respectfully requests that Issues at the Hearing “B” on page 6 be changed, as follows (deleted material shown in strike-out; amended material shown underlined):

The Requesting Parties proposed the added permit condition of a Ground Water Permit Information Repository. There was ~~no~~ written ~~or~~ and oral technical testimony presented to support the imposition of a new permit condition requiring DOE to create and maintain a repository for information relating to ground water discharge permit

DP-831. The knowledge and experience from providing public information for decades by Don Hancock of SRIC and Joni Arends of CCNS is sufficient for technical testimony and their evidence met their burden of presenting an affirmative case.

2. SRIC respectfully requests that paragraph #163 on page 38 be changed, as follows (deleted material shown in strike-out; amended material shown underlined):

SRIC and CCNS urges the GWQB to add the condition for a DP-831 Information Repository on the WIPP website. Pursuant to 20.1.4.400.A.1 NMAC, any person who proposes to include a permit condition has the burden to present an affirmative case on the challenged condition. DOE did challenge the condition. SRIC and CCNS provided ~~insufficient~~ evidence to meet this burden as outlined in the Introduction above.

3. SRIC respectfully requests that paragraph #166 on page 39 be changed, as follows (deleted material shown in strike-out; amended material shown underlined):

SRIC's closing argument urges the undersigned Hearing Officer to recommend that: Salt Cell 5 and Salt Storage Pond 5 should not be included in DP-831 because DOE mis-represented their purpose and

because the new shaft #5 is not permitted under the HWA. An additional condition should be included in the Permit to require a DP-831 Information Repository on DOE WIPP website. As demonstrated above, these two arguments were considered ~~but ultimately fail as a matter of law and for lack of sufficient credible evidence to establish a prima facie case~~ and DOE is required to establish a DP-831 Information Repository as described in September 8, 2021 Tr. 32 ll. 2-10 (Hancock).

4. SRIC respectfully requests that Conclusion of Law #9 on pages 42-43 be stricken in its entirety, and replaced, as follows (replacement material underlined):

The WQA provides that NMED “may impose reasonable conditions upon permits requiring permittees to...provide any other information relating to the discharge or direct or indirect release of water contaminants.” § 74-6-5.J(4) NMSA 1978. The Requesting Parties of the Information Repository condition have met the requirement to present an affirmative case. 20.1.4.400.A(1) NMAC. The Requesting Parties of the Information Repository condition have demonstrated that the condition is supported by the preponderance of the evidence. The comments and evidence supports that there would be a public benefit to including a DP-831 Information Repository in the Permit.

No exhibits and evidence states opposition to the Information Repository condition. Thus, requiring a DP-831 Information Repository on the DOE WIPP website is a reasonable condition, supported by the comments and evidence. The New Mexico Court of Appeals has found that NMED can impose such a reasonable condition: “Consequently, we hold that the Act grants NMED the power to impose reasonable permit conditions. That interpretation is consistent with the plain language of the Act and advances its underlying policies.” *Phelps Dodge Tyrone, Inc. v. N.M. Water Quality Control Comm’n*, 2006-NM CA-115, 140 N.M. 464, 470, 143 P.3d 502, 508, cert. denied, 2006-NMCERT-009, 140 N.M. 542, 144 P.3d 101.

5. SRIC respectfully requests that Conclusion of Law #10 on page 43 be stricken in its entirety, and that Conclusions of Law #11-20 be renumbered as #10-19.

Respectfully submitted,

/s/ Don Hancock

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Dated: December 6, 2021

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing SRIC Comments on the Hearing Officer Report was served by email on the following on December 6, 2021:

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/s/Don Hancock  
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